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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	CC Docket No. 96-128

To: The Commission

REPLY COMMENTS OF PAGEMART WIRELESS, INC.

PageMart Wireless, Inc. ("PageMart"), by its attorneys, hereby submits reply comments in response to the Commission's public notice in the above-captioned proceeding.[1/] The Commission solicited comment on several issues raised by the Court of Appeals for the District of Columbia Circuit's remand[2/] of certain portions of the Commission's Payphone Orders.[3/] The public notice attracted a number of comments from interested parties, including PageMart.[4/]

1/ Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding (CC Docket No. 96-128), DA 97-1673 (August 5, 1997).

2/ Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997).

3/ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 11 FCC Rcd. 20451 (1996); Order on Reconsideration, 11 FCC Rcd. 21233 (1996) (collectively, the "Payphone Orders").

4/ As described in its Comments, PageMart is an innovative paging

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The record in this proceeding was supplemented by detailed cost and technical information submitted by PSPs, IXCs, paging companies, and other interested parties. Information provided by these parties supported the conclusion reached by PageMart in its original comments. Specifically, the difficulties and inequities entailed in deriving, from a deregulated local coin rate, a payphone compensation rate, call into the question the basic premise of the Commission's payphone compensation scheme. PageMart urges the Commission, as its makes its determinations during the remand of its Payphone Orders, to reconsider adopting a "caller pays" system of payphone compensation.

I. The IXCs Have Demonstrated that Selective Blocking of 800 and 888 Calls -- a Prerequisite to Market Competition in a "Carrier Pays" System -- Is Not Feasible in the Near Future.

The Commission determined that its interim and final payphone compensation plans would be based upon a "competitive" market rate of compensation. In its comments, PageMart explained that a system in which carriers are responsible for compensating PSPs cannot result in a competitive market in the absence of selective blocking technology.[5] The Court's Illinois decision made clear

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[4](...continued)
company that provides low-cost, nationwide services and that subscribes to 800 and 888 numbers through contracts with interexchange carriers ("IXCs") and provides these numbers to its customers; the customer may then be paged without the calling party's incurring a long-distance toll charge. As a reseller of IXC services, PageMart is directly affected by the authorization that the FCC gave to the IXCs to pass on to their customers, including paging providers, the costs incurred by IXCs for compensating payphone service providers ("PSPs") for 800/888 number calls.

[5] Comments at 3-4. See Comments of Paging Network, Inc.

(continued...)

that the "carrier pays" mechanism will result in a competitive market pricing system only if carriers have the ability to block calls and the resulting leverage to negotiate with PSPs regarding rates of compensation. In the absence of such leverage, there will be no market force limiting the compensation rate.

PageMart, in its comments, further stated that it understood that none of the IXCs currently has the technological capacity to provide 800/888 numbers with selective blocking of calls from payphones made to these numbers. Comments submitted by the IXCs confirmed PageMart's assertion. Cable & Wireless, Inc. ("CWI") explained that -- because blocking for one product or customer necessitates blocking for every CWI product originating at a payphone -- CWI cannot selectively block subscriber 800 calls and continue to allow calls charged to calling or debit cards.[6/] Thus, CWI's network is only capable of a "least common denominator" approach. Sprint Corporation ("Sprint")[7/] and AT&T Corporation ("AT&T")[8/] both made clear that the implementation of appropriate blocking technology would result in prohibitively-large technology expenditures.

MCI Telecommunications Corporation ("MCI") estimated that its systems would not be capable of selective blocking until approximately the third

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[5/](...continued)
("PageNet") at 4-9. PageNet emphasized the importance of distinguishing between blocking on a per-payphone basis and blocking on a per-call (or per-subscriber) basis, and illustrated the technical difficulty inherent in providing this capability.

[6/] Comments of CWI at 10. See also Comments of PageNet at 6-9, citing the "LEC White Paper" filed with the Commission on June 16, 1997.

[7/] Comments of Sprint at 6.

[8/] Comments of AT&T at 17.

quarter of 1998.[9] Moreover, according to MCI, even if blocking were available, it would not be feasible for MCI to negotiate compensation with the thousands of PSPs for which it might carry calls.[10] If MCI and the other large IXCs are not in a position to negotiate compensation rates, 800/888 subscribers such as PageMart will have no leverage over the rates that will likely be passed along to them.

II. Selective Blocking of 800 and 888 Calls, Even if It Were Feasible, Would Not Serve the Commission's Goals.

The Court of Appeals, in addition to PageMart and numerous parties in this proceeding, focused the Commission's attention on blocking technology as a critical determinant of the success of a market-based compensation scheme. This emphasis on blocking should have raised a "red flag" for the Commission early on in its consideration of the payphone compensation issue. Clearly, a system that encourages the blocking of telecommunications services does not serve to further the Commission's goal of providing a wide variety of telecommunications services to the greatest possible number of consumers. As stated by the consumer advocacy group, the Competition Policy Institute ("CPI"), "consumers should take little comfort in this scenario."[11]

9/ Comments of MCI at 4.

10/ Id. This view was echoed in the Comments of General Communication Inc. at 3.

11/ Comments of CPI at 4. CPI explained that, in numerous monopoly-type PSP situations, the ability of IXCs to block a call for which the PSP compensation price is too high will not result in a price that a competitive market would deliver. Rather, the resulting price will demonstrate that the PSP was able to extract the maximum revenue from the IXCs and the consumers they serve.

To the extent that selective blocking technology does become viable at some point in the distant future, both IXCs and 800/888 subscribers in a "carrier pays" system would be forced to choose between paying exorbitant compensation rates and creating ill will among customers who realize that their intended calls have been blocked. Several parties commented on their reluctance to implement such a scheme.[12]

As it reviews the record on remand, the Commission should recognize that potential negative effects on the public may result from adherence to its unnecessarily complex scheme for recreating a competitive market compensation rate. The Commission should reconsider a simpler and far more straightforward solution for arriving at a competitive market result -- each caller initiating a payphone call could deposit a coin in the payphone to cover the costs incurred by that call.

III. Information Provided by Parties Commenting in this Proceeding Casts Doubt on the Legality, As Well As the Equity, of Using a 35-Cent Compensation Rate During the Interim Period.

In its Public Notice in this proceeding, the Commission indicated that it would construe the Court's order remanding the Payphone Orders in a very narrow fashion and only consider one aspect of its rules to be vacated. Thus, according to the Commission, the interim compensation rate of 35 cents has not been vacated and

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[12] See Comments of GCI at 3 (". . . GCI does not want to block calls from payphone locations. This would only inconvenience and frustrate GCI's customers when they try to make an 800 or access code call."); Comments of MCI at 4 ("Although this [blocking] will prevent carriers and 800 subscribers from incurring excessive payphone compensation rates, it clearly is not in the interest of consumers or in compliance with the intent of Congress to encourage the deployment of payphones in the public interest.").

will remain in effect pending further development of the record. Numerous parties challenged the Commission's narrow interpretation on substantive legal grounds.[13/] These parties effectively demonstrated that, when the Court remanded the Commission's interim compensation scheme as "arbitrary and capricious," the scheme ceased to remain in effect.

An even greater number of commenting parties presented information which substantively proved that 35 cents is an inappropriate rate for compensating PSPs during the interim period, and that a deregulated local coin rate would be an inappropriate rate for compensation in the future. On an intuitive level, it is obvious that the costs to the PSP of providing a "coinless" call to access an IXC are quite different from the costs of providing a local coin call. Even PSPs acknowledged that coin calls entail a certain amount of collection and maintenance costs.[14/]

Certain PSPs attempted to circumvent this obvious difficulty with the use of a local coin rate by arguing that the costs of maintaining coin-operated phones are necessarily joint and several, PSPs would not have the incentive to provide phone service at all, they argued, if they could not expect to claim the revenues derived from a coin-operated system.[15/] Because the inclusion of "coinless" call capability is a mere by-product of the existence of the payphone -- the argument goes -- "coinless"

13/ See, e.g., Comments of AirTouch Paging at 5; Comments of the Personal Communications Industry Association at 2-7; Comments of the Competitive Telecommunications Association at 3-9; Comments of CWI at 2-4; Comments of LCI International Telecom Corp. at 2-3.

14/ See, e.g., Comments of Communications Central Inc. at 7.

15/ See Comments of the American Public Communications Council at 12; Comments of Peoples Telephone, Inc. at 6-7.

calls should necessarily absorb a portion of the fixed costs associated with providing coin service. PageMart remains unconvinced by this argument, and so should the Commission. If the Commission does not avoid this argument altogether by implementing a more-transparent, "caller pays"-type system, it should clearly distinguish the costs that are avoided in a coinless call and remove these costs from the compensation rate.

PageMart understands that the Commission could respond to the Court's remand by adhering to the FCC's reliance on the deregulated local coin rate and seeking data that will back up this reliance. PageMart urges the Commission to take this opportunity to review the fundamental premise of its system of payphone compensation and consider whether, in light of the new information in the record, the system provides the simplest, most efficient means of compensating PSPs for 800/888 and access calls. In this regard, PageMart would direct the Commission's attention to the detailed cost information provided by a number of IXCs in this proceeding.[16/]

In a truly competitive market, prices will tend to be driven down to cost. The great disparity between the cost data presented in the record and the existing local coin rate in the states that have deregulated local payphone rates indicates that these states are far from a truly competitive market. The Commission should consider this disparity and determine a more appropriate and justifiable measure for compensating PSPs.

[16/] See, e.g., Comments of CWI at 8-10; Comments of Frontier Corporation, generally; Comments of Midcom Communications Inc. at 10; Comments of Sprint at 8, 10; Comments of MCI at 3; Comments of AT&T at 6.

PageMart strongly supports a potential solution proposed by AirTouch.[17/] If the Commission is reluctant to implement a "caller pays" methodology, it should consider AirTouch's "modified caller pays" system. Airtouch proposed retaining the 800 and 888 codes associated with per call surcharges that are passed through, and introducing a unique 8XX code for customers that are willing to input a coin to cover local charges but reluctant to pay a long-distance toll. The existence of this 8XX code, by providing paging carriers with a number of options for marketing their services, would go far to lessen the burden on paging carriers and would be relatively simple to administer.

17/ Comments of AirTouch at 4, note 10.

IV. Conclusion.

In order to preserve equity and promote a competitive market for all telecommunications services, the Commission should take a comprehensive view of the issues that it is reevaluating in this proceeding, and consider carefully the enhanced record available to it as a result of the comments filed herein.

Respectfully submitted,

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